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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/335,648	06/18/1999	KEVIN L. KIMLE	P03566USO	6709

7590 07/26/2002
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EXAMINER

KYLE, CHARLES R

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 07/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/335,648

Applicant(s)

KIMLE ET AL.

Examiner

Charles R Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Claim 24 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected subcombination, there being no allowable generic or linking claim. The election with traverse was made in a telephone conversation with representative for applicant on July 19, 2002.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-18, 20, 22-23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual, hereinafter referred to as Manual.

Concerning Claim 1, Walker et al disclose the invention substantially as claimed including a method for contracting of commodities on the Internet (Abstract); which provides a centralized database for storage and retrieval of data (Fig. 2, elements 255, 269, 265, 267 and Col. 12, line 35 to Col. 13, line 62); storage in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col.

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13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the method of Walker et al, because this would have provided a buyer-driven market suitable for commodities which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3, as follows:

It is a goal of the present invention to provide a robust system which matches buyers' requirements with sellers capable of satisfying those requirements. The invention provides a global bilateral buyer-driven system for creating binding contracts incorporating various methods of communication, commerce and security for the buyer and the seller. The power of a central controller to field binding offers from buyers, communicate those offers globally in a format which can be efficiently accessed and analyzed by potential sellers, effectuate performance of resulting contracts, resolve disputes arising from those contracts, and maintain billing, collection, authentication, and anonymity makes the present invention an improvement over conventional systems.

As to Claim 2, Walker et al disclose information input by a browser at Col. 15, line 66 to Col. 16, line 2.

Regarding Claim 4, Manual discloses agricultural commodities as agricultural products at page 193, paragraph 1 to page 194, para. 2. See also page 197, Table and page 202, para. 3.

With respect to Claim 5, Manual discloses agricultural commodities as grains at page 199, para. 1 to page 202, para. 6 and as oilseeds at page 206, para. 5 to page 212 para. 4.

Regarding Claim 6, the Examiner takes Official Notice that fruits and vegetables are perishable products, as are grain and oilseeds. They require much the same harvesting, shipment and processing as grain and oilseeds. It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the combination of elements of Walker et al and Manual to contract for fruit and vegetable production because these products were analogous to grain and oilseeds and had similar requirements.

With respect to Claim 7, Manual discloses agricultural commodities as animals at page 212, para. 5 to page 219, para. 6.

Regarding Claim 8, see the discussion of Claim 6 above.

As to Claim 9, Manual discloses data relating to allocation of quantities of agricultural products among a plurality of areas at page 199, para. 1 to page 201, para.6. It would have been obvious to one of ordinary skill in the art at the time of the invention to have included this feature in the method of Walker et al because this would have facilitated the real world benefit of obtaining agricultural products of different varieties at differing times. It would also have reduced risk of loss of deliverable agricultural product by obtaining product from a plurality of areas, thus making total supply less susceptible to bad weather in one area.

Concerning Claim 10, see the discussion of Claim 4 above and it would further have been obvious to have updated the listing based on a change in data as a result of contracting

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between the supplier and the buyer. For example, if Smith had input data about desired 5,000 acres of Durum wheat, the database listing would have to have been updated to reflect that fact to correctly present information to potential suppliers. If Jones had then contracted for Jones' 5,000 acres of Durum wheat, the database would likewise require updating of the fact that the acreage was committed to production for Smith in order to correctly present information to other contracting participants.

Regarding Claim 11, Walker et al disclose a paper contract at Col. 6, lines 35-44.

As to Claim 12, Walker et al disclose an electronic contract using a digital signature at Col. 6, lines 45-65.

Regarding Claim 13, see the discussion of Claim 1 above, and Manual further discloses data related to agricultural crops to be expressed as bushels at page 324, "trading unit". As to the element recited in Claim 13 of updating data to reflect additional acres committed by the grower to display allocation of acres committed to the desired crop, see the discussion of Claim 10 above regarding updating.

As to Claim 14, Manual discloses management of delivery times and methods at page 350, "Futures Contracts", line 4.

Regarding Claim 15, Manual teaches utilization of quality data in commodities contracts at page 324, "Deliverable Grades" and page 350, "Futures Contract", fourth line.

Concerning Claim 16, Manual teaches pricing based on a variable at page 324, line 4, "Daily Price Limit".

As to Claim 17, Manual discloses time of delivery as a variable at page 201, para. 2-5.

Regarding Claim 18, Walker et al teach accessing a centralized database installed on an Internet Web server at Col. 5, line 66 to Col. 16, line 22.

As to Claim 20, see the discussion of Claim 4 above.

Concerning Claims 22 and 23, Manual teaches distinguishing among agricultural crops by geographic regions, product type, and time of delivery at page 199, para. 1 to page 201, para. 6. It would have been obvious to one of ordinary skill in the art at the time of the invention to have distinguished among agricultural products in the combination of Walker et al and Manual because this would have allowed potential sellers to contract for the particular product types grown in their particular areas and deliverable at times suitable to them.

As to Claim 25, Walker et al disclose an apparatus for contracting for commodities over a wide area network comprising an application/web server and a database serve at Col. 11, lines 58-63 and Col. 14, lines 30-52; communications links for the above at Fig. 1, elements 100, 110, 120; one or more user terminals, Fig. 1, elements 300, 400; and software to store data in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col. 13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to

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commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the system of Walker et al, because this would have provided a buyer-driven market, suitable for commodities and which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3. See the quotation of this text from Walker et al in the discussion of Claim 1 above.

As to Claim 26, Walker et al disclose a wide area distributed network (WAN) at Col. 11, lines 58-63; plural seller computers in operative communication with the WAN at Fig. 1, elements 300, Fig. 3 and Col. 14, lines 53 to Col. 15, line 22; plural buyer computers in operative communication with the WAN at Fig. 1, elements 400, Fig. 4 and Col. 15, lines 22 to 29; a database storing data relating to a specific type and amount of commodity which a supplier is willing to supply (Col. 13, lines 11-22 and 30-34); a database storing data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); and generation of a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to

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commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the system of Walker et al, because this would have provided a buyer-driven market, suitable for commodities and which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3. See the quotation of this text from Walker et al in the discussion of Claim 1 above.

Concerning Claim 27, Walker et al disclose a software security component to restrict access to the system at Col. 12, lines 27-30 and Col. 15, lines 3-5.

Regarding Claim 28, Walker et al disclose varying levels of access to data by authorized users of the system at Col. 27, line 19 to Col. 30, line 29.

Claims 3 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual and further in view of the Microsoft Press Computer Dictionary, Third Edition, hereinafter referred to as Dictionary.

As to Claims 3 and 19, Walker et al and Manual teach the invention substantially as claimed. See the discussions of Claims 1, 13 and 18 above. They do not specifically disclose the use of Java or other applets for input of and access to information to the system. Dictionary,

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however teaches the Java language and Java applets as useful for secure, robust, platform neutral programming of interactive applications for Internet Web browsers. See Java and Java applet topics, page 268 of Dictionary. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used Java applets for data input and access as taught by Dictionary, in the combination of Walker et al and Manual because this would have provided a for secure, robust, platform neutral method for users to input and access information to contract for commodities on the Internet.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual and further in view of the Peterson et al.

As to Claim 21, Walker et al and Manual teach the invention substantially as claimed. See the discussions of Claim 13 above. They do not specifically disclose the allocation of data of numbers of acres among a plurality of grain elevators. Peterson et al, however suggest the need for such an allocation in Background of the Invention. They disclose that grain dust is a substantial problem in handling of agricultural products, as it may be contaminated with fungus or cause explosions. It would have been obvious to one of ordinary skill in the art at the time of the invention to have allocated data on agricultural crops among a plurality of grain elevators as taught by Peterson et al in the method of Walker et al and Manual because this would have reduced the risk of total loss of a contract's agricultural crops in the event of grain contamination or explosion a particular grain elevator by "spreading the risk around" among elevators.

Response to Arguments

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Applicants' arguments addressed below are those presented in paper number 8, filed February 26, 202.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Walker et al reference to either a constructive reduction to practice or an actual reduction to practice. There is insufficient evidence presented in the Affidavit filed May 24, 2002 to show due diligence for the period from the filing date of Walker to the July, 1997 to persuade the Examiner that the diligence requirement has been met. For this reason, Walker et al is not removed as a prior art reference. See MPEP 715.07(a). The Examiner does agree with Applicants' statement of the time period for which due diligence must be shown. The fourth supplemental declaration, filed May 24, 2002 is non-persuasive because, although filed by a person not an inventor, it does not contain sufficient evidence of due diligence throughout the entire required period. The evidence cited by Applicant from the August 27, 2001 Declaration are non-persuasive for the following reasons.

1) Exhibits A and B consist of undated copies of "day planner" pages. The content is very general and does not provide details of what activities occurred on which dates to develop the invention.

2) Exhibit C consists of seven undated screen shots and one dated example (8 of 8). The date of this particular screen shot is 7/23/01, a date which cannot contribute to a showing of due diligence.

3)) Exhibit C consists of undated screen shots which relate to confirmation, making, scheduling, deliveries of contracts and an agreement document.

Additionally, the third supplemental declaration, at page two, cites a first meeting on October 1, 1996. This date is substantially later than the filing date of Walker, September 4, 1996. Discontinuities such as this are present throughout the declarations.

Examples of evidence which might be persuasive are the software equivalent of a laboratory notebook, dated printouts of computer code or flowcharts, detailed notes of individual meetings which show uninterrupted efforts to advance the invention. Dated sales or promotional materials would also be informative. To date, the evidence of due diligence in the affidavits is insufficient.

Objections to the affidavits based on signatures are withdrawn based on the confirmation by Alan G. Schmitz in the second supplemental declaration. Further, the Examiner withdraws the objection related John E. Stucki based on facts presented and the MPEP citation.

As to Applicants' arguments regarding Walker, at page 4 of paper number 8, Applicants go to substantial effort to describe differences between their invention and Walker. Applicants argue that their invention differs from Walker because it is not a CPO system. Applicants fail to note that the CPO of Walker is the equivalent of a bid (see Walker, Col. 8, lines 42-56). Such bidding occurs in the environment of a commodities exchange which is exactly the environment of Applicants' invention and Walker. See Walker Col. 32, lines 1-15; Col. 2, lines 45-54; Col. 3, lines 10-18. For this reason, Walker is directly comparable to Applicants' invention.

At page 5, first full paragraph, Applicants argue limitations not present in the Claims.

At the second full paragraph of page 5, Applicants argue an element of management of allocation of availability but fail to explain why the rejection of Claim 9, which treats this very concept, is incorrect.

As to Applicants' argument at page 5 of paper number 8 about the "Commodity Trading Manual" and its combination with Walker, no refutation of the Examiner's motivation to combine the references is provided. This motivation was provided at paper number 7, page 3, line 12 to end of page and is restated above.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Arguments regarding Claim 24 are moot in view of its withdrawal from consideration.

Conclusion

This is an RCE of applicant's earlier Application No. 09/335648. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on Monday - Friday, 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-1113 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

crk

crk

July 24, 2002


VINCENT MILLIN
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